

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FABIAN MARIE HILL,

Defendant-Appellant.

---

UNPUBLISHED

January 17, 2003

No. 235003

Wayne Circuit Court

LC No. 98-011572

Before: Jansen, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court originally sentenced defendant to three years' probation for felonious assault and completion of six months' SAI boot camp followed by tethering for one and a half years or placement in a halfway house for felony-firearm. The prosecution appealed the felony-firearm sentence and this court vacated and remanded for resentencing in accordance with MCL 750.227b. *People v Hill*, unpublished opinion memorandum of the Court of Appeals, issued November 3, 2000 (Docket No. 225266). The court thereafter sentenced defendant to the mandatory two years' imprisonment for felony-firearm. Defendant now appeals as of right. We affirm.

This case arose out of an incident involving defendant, defendant's boyfriend, and the victim. Defendant arrived at her home and found her boyfriend with the victim. According to the victim, defendant became enraged, retrieved a gun, waved it at the victim and fired several shots into the ceiling and wall. At some point during a struggle between defendant and her boyfriend, defendant's boyfriend took hold of the gun. As the victim attempted to escape, defendant followed her outside and continued to attack her.

Defendant's sole issue on appeal is that there was insufficient evidence to convict her of felony-firearm. When determining whether sufficient evidence was presented at trial to support a conviction, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Circumstantial evidence and the reasonable inferences arising from that evidence may be sufficient to prove the elements of a crime. *Id.* All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Defendant does not challenge the evidence as it relates to her felonious assault conviction. Defendant challenges the evidence regarding the felony-firearm conviction, arguing that there was no credible evidence that a firearm was used to assault the victim. Felonious assault requires: (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *Avant, supra* at 505, citing *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *Id.*

The victim testified that defendant hit her in the head with a cordless telephone and then assaulted her with a gun. According to the victim, defendant waved the gun in the air, directing it at the victim several times, and then hit the victim in the head with it. After continuously waving the gun, defendant fired four shots into the ceiling, and fired one shot in the direction of the victim. This testimony was sufficient for a reasonable factfinder to find that the elements of felony-firearm were established beyond a reasonable doubt.

Defendant contends that the victim was not credible, that her testimony conflicted with the other evidence presented, and that there was no credible evidence of blood found on the gun. Defendant's boyfriend testified that defendant fired shots into the ceiling and waved the gun in the air, but he saw defendant strike the victim in the head with only the telephone. He further testified that the fifth shot was fired during a struggle between himself and defendant over the gun. Defendant herself acknowledged during testimony that she fired four shots into the ceiling and waved the gun in the air, but testified that the fifth shot fired into the wall was the result of the struggle over the gun between herself and her boyfriend. Defendant also denied hitting the victim in the head with the gun. Although the victim's testimony does appear to conflict with that of the other witnesses in some regards, defense counsel adequately made the jury aware of the discrepancies during his examination of the witnesses. Questions of credibility are for the trier of fact to resolve and not this Court. *Avant, supra* at 506.

Affirmed.

/s/ Kathleen Jansen  
/s/ Joel P. Hoekstra  
/s/ Hilda R. Gage